

REMARKS

Applicant has carefully studied the Office Action of 04 October 2003 and offers the following remarks in response thereto.

Claims 1-12, 15-25, 32-36, and 41-51 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ando. Applicant respectfully traverses. The present application was filed on 26 September 2000. Ando was filed in Japan on 25 May 2000, but did not enter the PCT process until 23 May 2001, after the filing date of the present application. Since the Japanese filing date is before the amendments to § 102(e) (i.e., before 29 November 2000), the Japanese filing date is not the § 102(e) date of the reference. The earliest indicated publication date is 29 November 2001, after the filing date of the present application. Under MPEP § 2136.03, it is clear that Ando does not qualify as prior art.

Since Ando is not prior art, the rejection is not supported and Applicant requests that the rejection be withdrawn.

Claims 26-31 and 37-40 were rejected under 35 U.S.C. § 103 as being unpatentable over Ando in view of Nimura et al. Applicant respectfully traverses. As explained above, Ando is not available as prior art. Since Ando is not available as prior art, the rejection is not supported and Applicant requests that the rejection be withdrawn.

Applicant appreciates the indication that claims 13 and 14 contain allowable subject matter, but in light of the fact that Ando is not available as prior art, an amendment is not required at this time.

Applicant attempted to reach the Examiner by phone on 09 December 2003 to schedule a telephonic interview. On 11 December 2003, the Examiner was able to discuss this matter with Applicant, and at that time requested that a response that pointed out these facts be prepared and filed and that he would reconsider his position upon receipt of the response. Applicant herein does so to make this argument formally of record.

Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

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